



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

29 October, 1997

VIA FAX AND FIRST CLASS MAIL

FAX (202) 624-7222

Charles H. Roistacher, Esq.
Brett G. Kappel, Esq.
Powell, Goldstein, Frazer & Murphy, LLP
1001 Pennsylvania Avenue, N.W., Sixth Floor
Washington, D.C. 20004

Re: MURs 4322 and 4650

Dear Messrs Roistacher and Kappel:

This letter responds to your letter of October 14, 1997, which I received upon my return to the office. Although I understand that in my absence you had a telephone conversation on 15 October with Mark Allen of this Office, I wanted to clarify matters further. Your letter indicates an apparent misunderstanding of the Federal Election Campaign Act (FECA) and Commission procedures regarding the initiation of an investigation. As you mentioned in your letter, the Commission may initiate an investigation by four methods: by complaint, by referral from a government agency, by information ascertained in the normal course of carrying out its supervisory responsibilities and by a sua sponte submission from a respondent. However, as I indicated in the October 8 letter, your October 2 letter does not fully satisfy any of the four methods. Your letter does not qualify as a complaint since it was not signed and notarized, and your letter neither constitutes a referral from another agency nor information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities through review of reports filed with the Commission.

Nor does your letter qualify as a sua sponte submission. A sua sponte is a submission whereby someone informs the Commission that they themselves may have violated the Act. Your letter makes allegations against third parties, not against yourselves or your clients. That distinction is very significant because under 437g of the FECA, the subject of a complaint has the right to notice of the complaint and an opportunity to address the complaint. However, the subject of a sua sponte submission is not provided the same opportunity, since they already would have addressed the

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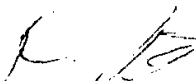
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allegations in the sua sponte submission. The Commission takes its responsibilities under the FECA very seriously. Treating your October 2 letter as a sua sponte submission, as you assert, would effectively subvert the requirements for acceptance of third party complaints set forth in 437g and would be unfair to the alleged respondents. This Office would gladly consider your signed and notarized complaint, should you choose to submit one.

Finally, you expressed a concern about the future integrity and professionalism of the investigation and indicated that your clients may not continue to cooperate with the investigation. This Office appreciates that this investigation may have taken a significant toll on you and your clients. However, we appreciate your past cooperation in this matter and the numerous documents with which your clients have provided us. We have considered those documents, and we would like to complete this investigation as promptly as possible. It would expedite the investigation if you could provide us with the information I requested in my October 8 letter (Mr. Greene's personal calendars from 1992 - 1995; his canceled checks from 1992 showing his payments to Enid Greene for the Penrose Drive property; information on the process by which documents were retrieved from Mr. Waldholtz's computer after his disappearance, including who broke the passwords, and when and how it was done; and any other documents which were obtained from Mr. Waldholtz's computer, other than the ones you submitted). Also, in your October 14 letter, you referred to an attached letter which Ms. Greene received from the Office of the Attorney Discipline of the Utah State Bar. However, we did not receive any attachment to your letter. In addition, you have continually asserted that the Commission should take no further action against your clients since the U.S. Attorney failed to find any evidence that Mr. Greene and Ms. Greene conspired with Joseph Waldholtz to violate section 441f of the FECA. It is my understanding that the U.S. Attorney also provided you with a declination letter to that effect. It would greatly assist our investigation if you would also provide us with a copy of the declination letter. Your continued cooperation in this matter is appreciated.

Sincerely,


Kamau Philbert
Attorney